



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 07172804

DATE: JULY 6, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, a home healthcare provider, seeks to employ the Beneficiary as an operations manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish its ability to pay the proffered wage. A motion to reopen was denied by the Director. The Petitioner filed an appeal, which we dismissed. Like the Director, we found that the Petitioner did not establish its continuing ability to pay the proffered wage from the priority date onward. We denied eight subsequent motions to reopen and reconsider on the same ground.

The case is now before us on the Petitioner’s ninth motion to reopen and motion to reconsider. Upon review, we will dismiss the combined motion.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

In order to be eligible for the benefit sought, a petitioner must establish that it has the ability to pay the proffered wage, as stated on the labor certification, from the priority date of the petition until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). In this case, the proffered wage is \$156,520 per year, and the priority date is September 22, 2010.

A petitioner may establish its ability to pay the proffered wage if it has employed the beneficiary at a salary equal to or greater than the proffered wage. A petitioner may also establish its ability to pay the proffered wage if it has net income or net current assets in a given year that equal or exceed the

proffered wage or the difference between the proffered wage and wages paid to the beneficiary, provided it can pay the proffered wages of its other employment-based immigrant petitions as well. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014). If the above factors are insufficient to establish a petitioner's ability to pay the proffered wage, USCIS may consider other factors in a "totality of the circumstances" analysis. *See Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

In our previous decisions we have determined, based on the evidence of record, that the wages paid to the Beneficiary were less than the proffered wage in each of the years 2010 to 2016, and that the Petitioner did not establish its continuing ability to pay the proffered wage of this Beneficiary and the proffered wages all of its other I-140 beneficiaries based on either its net income or its net current assets¹ in any of those years. In our most recent decision we indicated that no evidence had been submitted of any wages paid to the Beneficiary in the years 2017 and 2018, nor any evidence of the Petitioner's net income or net current assets in the years 2017 and 2018 based on one of the required forms of evidence specified in 8 C.F.R. § 204.5(g)(2). In our previous decisions we have also determined that the Petitioner did not establish its continuing ability to pay its proffered wage obligations to this Beneficiary and all of its other I-140 beneficiaries based on the totality of its circumstances, as in *Matter of Sonogawa*. In our latest decision we stated that the only new facts presented on motion were contained in a statement from the Petitioner's executive vice president, but noted that they were unsupported by any corroborating documentation and would not have established the Petitioner's ability to meet its total proffered wage obligation in any event because the Petitioner had still not submitted evidence of its proffered wage obligation to each of its other I-140 beneficiaries. We also determined that the Petitioner presented no grounds for reconsideration of our previous decision based on any incorrect application of law or policy.

A. Motion to Reopen

With its current motion the Petitioner submits another letter from its administrator – executive VP with various assertions concerning its business status and practices, a recitation of dollar figures (gross sales, officer compensation, salaries and wages, and taxable income) from its federal tax returns for the years 2010-2018, future contracts for fiscal year 2019, and additional financial resources. The federal tax return figures are of marginal utility because they do not include the key figures of net income and net current assets,² and the Petitioner's claim of additional financial resources has already been made, and dismissed by us, in previous motions. Moreover, the only supporting documentation for any of the Petitioner's "new facts" are copies of Kinser reports for the years 2016-2018 that were already in the record. No other corroborating documentation was submitted. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft*

¹ As prescribed in the regulation at 8 C.F.R. § 204.5(g)(2), a petitioner must submit either an annual report, or a federal tax return, or an audited financial statement as evidence of its ability to pay the proffered wage in a given year.

² The Petitioner's net income and net current assets figures are already in the record for some of those years (for which copies of the Petitioner's federal income tax returns were submitted), but as discussed in previous decisions those figures, even if one or the other exceeded the Beneficiary's proffered wage in a given year, were insufficient to establish the Petitioner's ability to meet all of its proffered wage obligations because of deficient documentary evidence concerning the Petitioner's other I-140 beneficiaries.

of California, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Finally, even if the Petitioner submitted substantive new facts on motion, they would not be sufficient to establish its ability to pay the proffered wage without documentary evidence of its total proffered wage obligations to all of its I-140 beneficiaries. The Petitioner was first requested to submit such documentation in our request for evidence (RFE) on February 5, 2013, has been reminded of this evidentiary deficiency in all of our decisions since then, but has submitted only a fraction of the requested evidence since the RFE and none in support of the current motion. The regulation at 8 C.F.R. § 103.2(b)(14) provides that the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Thus, the current motion to reopen does not establish the Petitioner's continuing ability to pay the proffered wage from the priority date onward.

B. Motion to Reconsider

The Petitioner does not claim any incorrect application of law or policy in our most recent decision, nor assert any legal basis for reconsideration that has not already been made in previous motions and dismissed by us in our prior decisions.

Accordingly, the Petitioner has presented no basis for us to reconsider our previous determination that the Petitioner has not established its continuing ability to pay the proffered wage from the priority date onward.

III. CONCLUSION

The Petitioner has not established any new fact(s) with corroborating evidence that establish its ability to meet its proffered wage obligations, nor established that our previous decision warrants reconsideration based on an incorrect application of law or policy. Therefore, the Petitioner has not shown proper cause for reopening or reconsideration, nor established eligibility for the benefit sought.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.